

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

On November 17, 2017, defendants Robinson Pharma, Inc. *et al.* (“Defendants”) filed a series of Requests for Approval of Substitution of Counsel (“Requests”) seeking to permit R. Joseph Trojan, Esq. to withdraw and to substitute Lester Savit, Esq. (Docket Nos. 163, 164, 165, 166, 167.) Attorney Savit is a member of the firm of ONE LLP. As discussed in an earlier ruling (Docket No. 161), the assigned judge, the Honorable Josephine L. Staton, is married to Owen Prell, Esq., currently a partner in ONE LLP. In light of the potential conflict of interest, Judge Staton recused herself from ruling on the Requests. (Docket No. 168.)

1 Consistent with General Order 16-05 and Local Rule 72-5, the  
2 Requests were assigned to the undersigned for decision. (Referral of Request for  
3 Approval, Nov. 21, 2017, Docket No. 169).

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5 Imagenetix, Inc. (“Imagenetix”) has filed an opposition. (Docket No.  
6 170.)

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8 For the reasons set forth below, the Court denies the Requests.

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10 I. Applicable Local Rule.

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12 “A motion for leave to withdraw must be made upon written notice given  
13 reasonably in advance to the client and to all other parties who have appeared in  
14 the action.” L.R. 83-2.3.2. “Unless good cause is shown and the ends of justice  
15 require, no substitution or relief of attorney will be approved that will cause delay  
16 in prosecution of the case to completion.” L.R. 83-2.3.5.

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18 II. Discussion.

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20 The Court finds that substitution would result in undue delay in  
21 prosecution of the case. A motion for the award of enhanced damages and fees,  
22 stemming from a finding of infringement by Defendants, is scheduled for hearing  
23 on December 1, 2017. (Docket No. 152.) The motion is not an ordinary one, and  
24 its resolution would turn on the entire course of the litigation over the past three  
25 years. See Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S.Ct. 1749,  
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28

1 1756 (2014).<sup>1</sup> It would require a new judge a substantial amount of time to master  
2 anew and to absorb record to date. Even so, a new judge would not have the  
3 benefit of personal observation of the parties' conduct over the course of  
4 litigation.

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6 Imagenetix points out that its paper were drafted to take into account  
7 that Judge Staton has an extensive and detailed knowledge of the case, and thus  
8 Imagenetix "did not rehash all of the details of Defendant's litigation  
9 misconduct." (Opposition, p. 1.) If a new judge were assigned, Imagenetix might  
10 quite reasonably seek additional time to provide a fuller showing to that judge.

11  
12 Defendants have made no effort to show good cause in light of the  
13 obvious undue delay which the assignment of a new judge would cause. They  
14 present no more than the standard G-01 form. Moreover, the history of  
15 Defendants' efforts to recuse Judge Staton suggests both an absence of good cause  
16 and an absence of good faith in presenting the Requests. Defendants learned in  
17 October 2017 that Judge Staton was married to Mr. Prell (Docket No. 158-3), and  
18 on that basis sought to recuse Judge Staton on the theory that her household had a  
19 financial interest in the outcome of a fee dispute between ONE LLP and Robison  
20 Pharma. (Docket No. 158.) Defendants had failed to learn before filing that  
21 motion that Mr. Prell was not a partner at the time of the fee dispute, thus negating  
22 the premise of the motion to recuse. The intentional effort to create a conflict of  
23 interest does not amount to good cause. Nor would the interest of justice be

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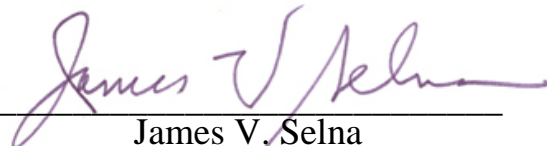
24  
25 <sup>1</sup>"We hold, then, that an 'exceptional' case is simply one that stands out from others with respect  
26 to the substantive strength of a party's litigating position (considering both the governing law and  
27 the facts of the case) or the unreasonable manner in which the case was litigated. District courts  
28 may determine whether a case is 'exceptional' in the case-by-case exercise of their discretion,  
considering the totality of the circumstances." *Octane Fitness*, 134 S.Ct. At 1756 (emphasis  
supplied).

1 served by entertaining such a brazen effort to manipulate the assignment of this  
2 case.

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4 III. Conclusion

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6 The Requests are denied.

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9 Dated: November 22, 2017

  
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James V. Selna  
United States District Judge